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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

NICK JAMES MIDDLETON,

Defendant and Appellant.

E057461

(Super.Ct.Nos. FWV1201671,
FCH1200408)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael R. Libutti, Gerard S. Brown, and Colin J. Bilash, Judges. Affirmed.

Janice R. Mazur, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Case No. FWV1201671 (Case No. 1) and Case No. FWV1200548 (Case No. 2)

On July 16, 2012, a felony complaint (case No. FWV1201671) charged defendant and appellant Nick James Middleton with felony possession of a controlled substance (methamphetamine) (Health & Saf. Code, § 11377, subd. (a), count 1) and three misdemeanor charges. In connection with count 1, it was also alleged that defendant was previously convicted of eight felonies (Pen. Code, § 1203, subd. (e)(4)), and that he had suffered three prior convictions and did not remain free from prison custody for five years (Pen. Code, § 667.5, subd. (b)).

On August 23, 2012, in case No. FWV1201671, pursuant to a plea agreement, defendant plead guilty to count 1 in exchange for a three-year “split sentence,” one year of which would be served in a drug treatment program at Victory Outreach and the balance in county prison under the Criminal Justice Realignment Act of 2011. (Stats. 2011, 1st Ex. Sess. 2011–2012, ch. 15, § 1.) The trial court agreed to dismiss the remaining counts and allegations at the sentencing hearing scheduled for September 20, 2012. At defense counsel’s request, defendant was immediately released into the custody of Victory Outreach.

Defendant also admitted he violated his probation in case No. FWV1200548. The parties agreed to a three-year split sentence, to run concurrent with case No. FWV1201671.

Case No. FCH1200408 (Case No. 3)

On September 11, 2012, prior to the scheduled sentencing date for case Nos. 1 and 2, another felony complaint (case No. FCH1200408) was filed charging defendant with felony possession of a controlled substance (methamphetamine). (Health & Saf. Code, § 11377, subd. (a).) On September 18, 2012, pursuant to a plea agreement, defendant pled guilty to the single count and was sentenced the same day to three years' probation under Proposition 36. The court and both counsel were apparently unaware of the proceedings in case Nos. 1 and 2 or of the September 20, 2012 sentencing hearing.

September 20, 2012 Sentencing Hearing for Case Nos. 1 and 2

At the sentencing hearing for case Nos. FWV1201671 and FWV1200548, the parties became aware of defendant's Proposition 36 status in case No. 3. Because defendant had failed to abide by the terms of the original plea agreement and remain in the rehabilitation program, the parties agreed to enter into a new plea agreement. The court stated: "[Y]ou . . . originally had a different deal. Your deal was for a split sentence with a residential program, which you were delivered to, but didn't successfully finish and you got in some other trouble. Because of all that, we can't honor the original agreement. . . . I wouldn't accept it anymore because of the new case that you picked up while you were out [¶] You follow me on that?" Defendant replied, "[y]es, sir."

Thereafter, the trial court sentenced defendant in accordance with the terms of the new agreement to a total term of three years in county prison as follows:

In case No. FWV1201671, defendant was sentenced to the upper term of three years in county prison, and the court awarded defendant credit for time served of 55 actual days and 55 days of conduct credit.

Probation was revoked in case No. FWV1200548, and a previously suspended two-year term in county prison was imposed, to be served concurrent with case No. FWV1201671. The court awarded defendant credit for time served of 133 actual days and 133 days of conduct credit.

In case No. FCH1200408, defendant was terminated from the Proposition 36 program and sentenced to the midterm of two years in county prison, to run concurrent with case Nos. FWV1201671, FWV1200548, and CJR1200658. The court awarded defendant credit for time served of 12 actual days and 12 days of conduct credit.

In a fourth case, case No. CJR1200658, the court revoked and terminated defendant's community supervision. He was sentenced to 180 days in county prison to run concurrent with case No. FWV1201671. The court awarded defendant credit for time served of 55 actual days and 55 days of conduct credit.

On November 2, 2012, defendant filed timely notices of appeal challenging the validity of the pleas in case Nos. FWV1201671 and FCH1200408, and requested a certificate of probable cause in each case. Defendant asserted that his "admissions were not knowing, intelligent, and voluntary," and that he was "not in his right mind due to

drug detoxification causing him to not understand everything when being sentenced.”

The court denied defendant’s requests.

On November 15, 2012, an amended notice of appeal was filed for case Nos. FWV1201671 and FCH1200408, “based on the sentence or other matters that occurred after the plea and do not affect its validity.”

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court review the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.